

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 87603 of 2017

[Arising out of Order-in-Appeal No. PK/CT, CGST APPEALS-II/MUM/37/17-18 dated 31.07.2017 passed by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai.]

Empire Machine Tools

An enterprise of Empire Industries Limited
Empire House, 414, Senapathi Bapat Marg,
Post Box No.16330, Lower Parel (West),
Mumbai – 400 013.

.... Appellants

Versus

Commissioner of Service Tax-III, Mumbai

(Now Commissioner of CGST, Mumbai Central Commissionerate)

10th Floor, Lotus Info Centre,
372, Parel Station Road, Off Elphinston Bridge
Parel (East), Mumbai – 400 012.

.... Respondent

APPEARANCE:

Shri Prakash Shah, Advocate for the Appellant

Shri Aditya Singh Parihar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86904/2025

Date of Hearing: 18.08.2025

Date of Decision: 08.12.2025

Per: M.M. PARTHIBAN

This appeal has been filed by M/s Empire Machine Tools (An enterprise of Empire Industries Limited), Mumbai (herein after, referred to as "the appellants", for short) assailing the Order-in-Appeal No. PK/CT- CGST APPEALS-II/MUM/37/17-18 dated 31.07.2017 (herein after, referred to as "the impugned order") passed by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai.

2.1 The brief facts of the case are that the appellants herein are engaged *inter alia*, in the business of providing consultancy, support services in respect of certain goods viz., CNC Horizontal Boring & Milling machines, CNC Lathes, Vertical Turning centres, Universal Milling Machines developed or manufactured by various foreign suppliers viz., M/s HNK Machine Tool

Co. Limited, Korea, M/s Goratu Maquinas Herramienta, S.A., Spain etc., who are selling these locally to their customers directly. For the above purpose, the appellants had entered into agreements dated 04.04.2014 and 25.06.2014 with the foreign clients. The appellants have paid service tax in respect of such services provided to their foreign clients 'under protest' out of precaution and on their own account. For the purpose of payment of service tax on taxable output services and for compliance with the Service Tax statute, they are registered with the jurisdictional Commissionerate under service tax registration No. AAACE 2757RSD009.

2.2 The appellants by contending that the services provided by them were received by their clients situated abroad i.e., outside the taxable territory and that since they had received Foreign Inward Remittance Certificates (FIRCs) from their clients, stated that they are eligible for refund of service tax, by treating it as export of services in terms of Rule 3 of Place of Provision of Service (POPS) Rules, 2012. In this regard, the appellants had filed refund claim for an amount of Rs. 53,05,173/- in the prescribed Form 'R' on 20.05.2015 with the jurisdictional Assistant Commissioner of Service Tax. In response, the department had issued letter dated 03.08.2015 to the appellants pointing out the discrepancies found in the refund application and requested these to be rectified and appear for personal hearing before the original authority. On examination of the refund application, the original authority vide Order-in-Original dated 18.08.2015 had rejected the refunds under Section 11B of the Central Excise Act, 1944 as applicable to matters of service tax under Section 83 of the Finance Act, 1994. Being aggrieved with the original order, the appellants have filed an appeal before the Commissioner of Service Tax (Appeals), who in deciding the case has upheld the order of the original authority and rejected the appeal filed by the appellants by issue of Order-in-Appeal dated 31.07.2017, which is impugned herein. Feeling aggrieved with the impugned order, appellants have preferred this appeal before the Tribunal.

3.1 Learned Advocate appearing for the appellants submitted that they had acted as a 'Consultant' for the foreign supplier companies located outside India, in providing services in relation to suitability of products to be developed by such foreign suppliers and its sale in India, support services and advisory services to their clients. As such goods are directly sold by their clients from abroad upon payment of applicable taxes, he claimed that

there is no involvement any service rendered by the appellants in relation to their customers in India, and hence no service tax is payable by them.

3.2 He further submitted that the as regards the compensation fee received from the foreign clients, such amounts have also been duly accounted in their books of accounts and FIRC's have also been obtained in realisation of such compensation. Therefore, he stated that in terms of Rule 3 of POPS Rules, 2012, the service provided by the appellants would amount to exports and they are eligible to claim refund of such service tax paid under protest; further, these factual aspects have not been considered while rejecting the service tax refund claims. In respect of applicability of Rule 4 of POPS Rules, 2012 on the ground that services provided by them were used or consumed in India, for rejecting the refunds as upheld in the impugned order, he submitted that the agreements entered into by the appellants with their clients had clearly demarcated their role in providing the services only to their foreign clients and they are not directly providing any services to the customers of their clients in India. Further, he stated that the benefits of the services provided by them were accrued to their clients situated abroad and they are eligible to claim refund of service tax paid on such export of services. Therefore, he claimed that the rejection of refunds upheld by the learned Commissioner (Appeals) is contrary to the factual position and thus it is liable to be set aside.

3.3 Furthermore, learned Advocate submitted that in the case of appellants themselves for the subsequent period, on the remand direction of the Commissioner (Appeals) in one case and on their own in other cases, the jurisdictional Assistant/Deputy Commissioners had sanctioned the refund claims for the subsequent period; and the department had accepted these refund sanction orders and the same has been not appealed against. The details of such orders as given by him are as follows:

Date of Refund claim	Order-in-Original & Date	Period for which refund claimed	Amount of Refund (in Rs.)
20.05.2015	Refund/KS/135/2015 Dated 18.08.2015	October, 2014 to March, 2015	53,05,173/- (under dispute)
28.08.2020	Refund/AS/176/2018-19 Dated 28.02.2020	April, 2015 to June, 2015	15,13,267/- Refund sanctioned
09.06.2017	Refund/VC/37/2017-18 Dated 28.09.2017	October, 2015 to March, 2016	31,55,161/- Refund sanctioned
09.06.2017	Refund/VC/36/2017-18 Dated 28.09.2017	July, 2016 to September, 2016	10,45,698/- Refund sanctioned
09.05.2018	Refund/AS/2018-19 Dated 10.05.2019	October, 2016 to June, 2017	68,14,276/- Refund sanctioned

Therefore, he claimed that the department cannot take different stand before the Tribunal on the very same issue. Learned Advocate in support of the case of the appellants had also relied upon the judgement of the Hon'ble Supreme Court in the case of *Commissioner of Service Tax-III, Mumbai Vs. Vodafone India Limited* – (2025) 33 Centax 152 (S.C.). Thus, it is contended by the learned Advocate that the impugned order upholding rejection of the refunds cannot be sustained.

4. On the other hand, learned AR appearing for the Revenue reiterated the findings recorded in the impugned order.

5. Heard both sides and perused the case records.

6. The issue for decision before the Tribunal is to determine whether the services provided by the appellants and the receipt of consideration earned by them for such services, are liable for levy of service tax or otherwise, during the disputed period; and consequently whether the appellants are eligible for refund of service tax paid under protest, and later claimed by filing refund claim.

7. We have examined the documents placed on record and the appeal papers, wherein the appellants and the overseas clients viz., M/s HNK Machine Tool Co. Limited, Korea, M/s Goratu Maquinas Herramienta, S.A., Spain etc., are engaged in a contractual relation wherein the appellants act as consultant and provides the advisory services, support services etc., for which they get fees. The extract of the relevant clauses of such agreement are as follows:

"(a) Identify the requirement of potential users in India for the products of client by help of qualified engineers who identify application of equipment and its user in accordance to the product requirement, and inform the same to client.

(b) Informing the client for the upcoming projects in the whole Indian Territory with details of contract, nature of project, total investment and persons to be contacted and machines to be offered. Consultant shall send their field observations and reports to the client about requirement pattern, potential user

(c) Informing the client about the High value Investment in various sector like automobile, Farm Equipment, General Engineering, Tool Room, steel, Oil & Gas, Infrastructure and Power etc. Consultant shall no where act on behalf or under authorization of company or end user nor the consultant reserves or is entrusted with the right of acting as a broker or agent of client in whatsoever capacity or facilitator or any person in such capacity and meaning, between the client and

prospective end user but his role shall be restricted towards merely providing information and data study in terms of acceptability, usability compatibility of products.

(d) Providing information on Global/limited tenders published or expected to be published with expected time of finalization.

(e) To help company formulate a strategy to gain leadership and strong references in technical area of product application, compatibility, usability.

(f) Providing information on expansion plans or diversification plans of various industries.

(g) To assist in verifying the financial credibility of customers in the territory who have the potential to buy the products."

On perusal of the representative agreements dated 04.04.2014 and 25.06.2014 placed on record, which have been entered by the appellants with their foreign clients, it transpires that the role of consultant and the nature of services provided by them are clearly spelt out therein. Further, we find from the above agreements that there is no arrangement between the appellants and the foreign clients, wherein the appellants are empowered to make any obligation on behalf of the overseas entity or to bind overseas entity to any contractual obligation with any Indian customers. Further, the appellants do not have any authority to negotiate or conclude pricing decisions, to sign any contracts, or to make any commitments on behalf of the overseas entity; that the relationship between the parties as per the agreement is that of the independent contractor-contractee. The content in the agreements clearly provide that no services were provided by the appellants to end customers on behalf of the overseas entity. Thus, under such circumstances, it cannot be said that the appellants have acted as an intermediary in the dealings between the overseas entities and their customers in India. It is not in dispute that the appellants have not received the compensation for their services provided to their overseas clients in convertible foreign currency evidenced by FIRCs.

8. In the impugned order, learned Commissioner (Appeals) had come to the conclusion that the services provided by the appellants are not exports and they are not eligible for refund on the following grounds. The relevant paragraphs of the said order is extracted and given below:

"6. In the instant case, the appellant had provided consultation and advisory support to foreign clients and paid the service tax for consultancy and support services and filed the refund claim considering that there is no service tax payable by them. The adjudicating authority has rejected the refund claim by observing that the appellant is

providing Consultancy & Support Services in India where the said services are used or consumed and therefore the location of service receiver will be India i.e. within a taxable territory and that Service tax will be payable even if payment is received in foreign currency in view of the provisions of Rule 4 of the POPS Rules, 2012. On the other hand, the appellant had contended that the service tax is not payable by them as they are not covered under Rule 4 of the Place of Provision of Services Rules 2012 and the services provided by them to their foreign clients are covered under Rule 3 of Place of Provision of Services Rules 2012.

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9. *In the instant case, the appellants have submitted copies of consulting and business support agreement between them and their clients namely 1) Parpas, Italy, 2) Jobs SpA, Italy 3) Goratu, Spain. 4) Moore Tool, USA 5) Wuhan Heavy Duty Machine Tool Group Corp, China 6) WFL Millturn Technologies, Austria etc. which shows that they are providing Services to their clients outside taxable territory which includes, among others, identifying the requirement of potential users in India for the products of clients by help of qualified engineers who identify application of equipment and its user in accordance to the product requirement and inform the same to company; that they inform their clients for the upcoming projects in the whole of Indian territory with details of contract, nature of projects, total investment and persons to be contacted and that they also send their field observations and reports to their client about technical requirement pattern, potential user; that they inform the client about the High value investment in various sectors like automobile, farm Equipment, General Engineering, Tool Room, Steel, Oil & Gas, infrastructure and Power etc; that the services are provided on their accounts and they interact directly with the field subjects to obtain the requisite information and the entire services are performed on their own account; that they help client formulate a strategy to gain leadership and strong references in technical area of product application, compatibility, usability,*

10. *From the above, it is clear that the appellant is providing Consultancy & Support Services to their clients by help of qualified engineers for which they interact with the field subjects to obtain the requisite information, which is then provided to their clients which is consumed in India. It is pertinent to mention here that as per the charging Section 66B of the Finance Act, 1994, service tax is leviable on services provided or agreed to be provided in the taxable territory. Whether a service is provided or agreed to be provided in the taxable territory or not, is determined as per Section 66C of the Finance Act, 1994 and the Place of Provision of Services Rules 2012 made thereunder. It is wrongly assumed that if the service provided satisfies the criteria of Rule 6A of the Service Tax Rules, 1994 and if the payment is received in foreign convertible currency, the taxability would not fall under the ambit of Place of Provision of Services Rules, 2012. This notion is wrongly placed. It is the Place of Provision of Services Rules, 2012 introduced with effect from 01.07.2012 vide NN 28/2012-ST dated 20.06.2012 which decides the taxability of a service. In the instant case, admittedly the services provided by them includes among other identifying the requirement of potential users in India for the products of clients by help of qualified engineers who identify application of equipment and its user in accordance to the product requirement and inform the same to foreign clients and thus the benefit of the services*

accrues only to the clients available in India. Since the services are provided in relation to the goods and since it is in India where the said services are finally consumed therefore, as discussed supra, the location of service receiver will be India as per the provisions of Rule 4(a) of the Place of Provision of Services Rules, 2012 and thus the services of Consultancy & Support Services provided by the appellant is taxable and the appellant is required to pay the service tax on the said services and accordingly the appellant had misconstrued that no service tax is payable by them and thus the different case laws relied by the appellants are of no avail. In view of that I hold that the adjudicating authority had rightly observed that the service tax will be payable by the appellant and since the service tax is payable by the appellant, the impugned order of the lower adjudicating authority rejecting the refund claim needs no interference and is upheld."

9.2 The relevant provisions of the Place of Provision of Service Rules, 2012 under which the case was examined by the authorities below are also extracted for ease of reference:

Place of Provision of Services Rules, 2012

"Place of provision generally .

Rule 3 . *The place of provision of a service shall be the location of the recipient of service:*

Provided *that in case of services other than online information and database access or retrieval services, where the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service.*

Place of provision of performance based services.

Rule 4. *The place of provision of following services shall be the location where the services are actually performed, namely:—*

(a) services provided in respect of goods that are required to be made physically available by the recipient of service to the provider of service, or to a person acting on behalf of the provider of service, in order to provide the service:

Provided *that when such services are provided from a remote location by way of electronic means the place of provision shall be the location where goods are situated at the time of provision of service:*

Provided further *that this clause shall not apply in the case of a service provided in respect of goods that are temporarily imported into India for repairs and are exported after the repairs without being put to any use in the taxable territory, other than that which is required for such repair;*

(b) services provided to an individual, represented either as the recipient of service or a person acting on behalf of the recipient, which require the physical presence of the receiver or the person acting on behalf of the receiver, with the provider for the provision of the service."

9.2 In terms of Rule 3 *ibid*, in general, the place of provision of service is location of the recipient of service. In case present case, since the clients of the appellants to whom services are provided are located out of India, generally it would be treated as export of service in terms of Rule 3 *ibid*.

However, the said Rules also provide for certain situations, whereby the place of export is decided as provided therein. As per Rule 4 *ibid*, the place of provision of service has been considered as the location, where such services are actually performed. In terms of sub-rule (a) to Rule 4 *ibid*, where the performance of the service involves goods, then it has been provided that the services provided in respect of the goods, which are required to be made physically available by the recipient of service to the provider of service, shall be the place where the services are actually provided by engaging with the goods made available to the service provider. The modus of provision of services adopted by the appellants in providing consultancy services, support services etc., does not involve goods supplied by the overseas manufacturers/client. Such services through involve details about product application, compatibility, usability etc., about the products, does not require that the goods shall be supplied by the overseas clients to provide consultancy service. Therefore, in our considered view, the case of the appellants should appropriately fall under Rule 3 of the Rules of 2012, for consideration as 'export of service' and not under Rule 4(a) *ibid* as held by the authorities below. Further, on careful examination of the nature of agreement between the appellants and the foreign entities as per the above contractual clauses vis-à-vis the statutory provisions, it is abundantly clear that the services provided by the appellants to the overseas clients qualify as export.

9.3 The present refund application under consideration is relating to the period October, 2014 to March, 2015. However, from the various orders dated 09.06.2017, 09.05.2018 and 28.08.2020 passed by the jurisdictional Service Tax authorities for the subsequent periods viz., April, 2015 to June, 2015; October, 2015 to March, 2016; July, 2016 to September, 2016; and October, 2016 to June, 2017, we observe that the refund applications filed by the appellants were favourably considered, holding that the services were exported by the appellants and as such, they should be entitled to the benefit of refund, and the refund claimed were sanctioned.

9.4 The issue in hand has also been examined by the Hon'ble Supreme Court in the case of *Commissioner of Service Tax-III, Mumbai Vs. Vodafone India Limited* (*supra*) and it was held that the mere fact that the beneficiary of the service is located in India would not be a determinant factor for the levy of service tax under the Rules as the service is, in fact, provided to a recipient located outside India. The relevant paragraphs of the said

judgement dated 06.05.2025 delivered by the Hon'ble Supreme Court is extracted and given below:

"2. The orders passed by CESTAT in all these appeals have been in favour of the respondents-assesseees. The CESTAT has held that the services provided by the respondents-assesseees have been in fact exported out of India. Consequently, service tax is not payable by the assesseees on such services so exported, vide Rule 4 of the Export of Service Rules, 2005 ("Rules", for the sake of brevity). It has also held that the assesseees had rightly availed payment of CENVAT credit on inputs and input services used for providing such services vide Rule 5 of the Rules.

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4. The policy governing taxability of export of service was initiated in the year 1999 and in the year 2003, it was reiterated. Since service tax is a destination-based consumption tax, services that were exported out of India were not meant to be taxed. The benchmark in the year 1999 was, whether payment was received in convertible foreign exchange. Ultimately, in the year 2010, the benchmark again came to be fixed as receipt of payment in convertible foreign exchange.

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8. In response to this submission, learned Senior counsel and learned counsel for the respondents submitted that service tax is a contract based levy and therefore, it is the contract which determines the relationship between a service provider and a service recipient. Even if certain beneficiaries may be located in India, the service provider has no contractual relationship with such beneficiaries. There is no privity of contract between the beneficiary and the service provider. Therefore, the mere fact that the beneficiary of the service is located in India would not be a determinant factor for the levy of service tax under the Rules as the service is, in fact, provided to a recipient located outside India.

8.1 It was further contended on behalf of the respondent assesseees that various preparatory activities, such as sourcing vendors, identifying customers etc. may occur in India but such activities alone would not mean that the service has not been exported to a party located overseas. Even if the customer has requested for some service within India, what is of significance is to whom the service is provided and where the recipient of the service is located and secondly, from whom the payment in convertible foreign exchange is received and whether, the recipient is located outside India.

8.2 Learned senior counsel and learned counsel for the respondents contended that the reasoning in Paul Merchant is correct and CESTAT has rightly found that the Revenue has conflated the two categories and is subjecting category (III) services to the rigors of the performance based services under category (II) of the Rules. It was therefore their contention that the present appeals may simply be dismissed.

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12 . We have analyzed the nature of the activity of the respondent assessee in light of the parameters delineated in the proviso to sub-rule (3) of Rule 3 and as to, whether, the CESTAT was right in granting benefit of the exclusion from taxable services to the activities of the

respondent assessee as being an activity of export of service. We find that the CESTAT in all these cases has rightly analyzed the activity and granted the relief."

9.5 In view of a catena of decisions of the Hon'ble Supreme Court, such as *Birla Corporation Ltd. v. Commissioner of Central Excise* [2005 (186) E.L.T. 266 (S.C.)], *Jayaswals Neco Ltd. v. Commissioner of Central Excise, Nagpur* [2006 (195) E.L.T. 142 (S.C.)] etc., it is settled law that the department having accepted the principles laid down in the earlier cases and allowing the refund claims of the self-same appellants, cannot be permitted to take a contra stand in the subsequent cases before this Tribunal.

10. In view of the foregoing discussions and analysis, we are in agreement with the submissions made by the appellants that the consultancy services, support services etc. provided by the appellants to their clients situated overseas should be considered as 'export of service' and accordingly, they should be eligible for considering refund of service tax paid thereon. Therefore, we do not find any merits in the impugned order dated 31.07.2017 passed by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai, insofar as it has upheld the order of the original authority in rejecting the refund application filed by the appellants.

11. Accordingly, the impugned order is set aside and appeal is allowed in favour of the appellants with consequential relief, if any, as per law.

(Order pronounced in open court on 08.12.2025)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)